



Rep. Rita Mayfield

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1 AMENDMENT TO HOUSE BILL 3746

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 3746 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Consumer Fraud and Deceptive Business  
5 Practices Act is amended by changing Section 2L as follows:

6 (815 ILCS 505/2L) (from Ch. 121 1/2, par. 262L)

7 Sec. 2L. Used motor vehicles; modification or disclaimer of  
8 implied warranty of merchantability limited.

9 (a) Any motor vehicle sale conducted by a buy here/pay here  
10 motor vehicle dealer licensed under Section 5-102 of the  
11 Illinois Vehicle Code may not exclude, modify, or disclaim the  
12 implied warranty of merchantability prescribed in Section  
13 2-314 of the Uniform Commercial Code or limit the remedies for  
14 a breach of the warranty before midnight of the 15th calendar  
15 day after delivery of a used motor vehicle or until a used  
16 motor vehicle is driven 500 miles after delivery, whichever is

1 earlier. For the purpose of this Section 2L, the term "buy  
2 here/pay here motor vehicle dealer" means a motor vehicle  
3 dealer licensed under Section 5-102 of the Illinois Vehicle  
4 Code who, at any time within the previous 12 months, has  
5 conducted at least 5 retail installment transactions under the  
6 Motor Vehicle Retail Installment Sales Act where the motor  
7 vehicle dealer did not assign the retail installment contract  
8 to an unaffiliated third party finance source. In calculating  
9 time under this Section, a day on which the warranty is  
10 breached and all subsequent days in which the used motor  
11 vehicle fails to conform with the implied warranty of  
12 merchantability are excluded. In calculating distance under  
13 this Section, the miles driven to obtain or in connection with  
14 the repair, servicing, or testing of a used motor vehicle that  
15 fails to conform with the implied warranty of merchantability  
16 are excluded. An attempt to exclude, modify, or disclaim the  
17 implied warranty of merchantability or to limit the remedies  
18 for a breach of the warranty in violation of this Section  
19 renders a purchase agreement voidable at the option of the  
20 purchaser.

21 (b) An implied warranty of merchantability is met if a used  
22 motor vehicle functions substantially free of a defect that  
23 significantly limits the use of the used motor vehicle for the  
24 ordinary purpose of transportation on any public highway. The  
25 implied warranty of merchantability expires at midnight of the  
26 15th calendar day after delivery of a used motor vehicle or

1 until a used motor vehicle is driven 500 miles after delivery,  
2 whichever is earlier. In calculating time, a day on which the  
3 implied warranty of merchantability is breached is excluded and  
4 all subsequent days in which the used motor vehicle fails to  
5 conform with the warranty are also excluded. In calculating  
6 distance, the miles driven to obtain or in connection with the  
7 repair, servicing, or testing of a used motor vehicle that  
8 fails to conform with the implied warranty of merchantability  
9 are excluded.

10 (c) An implied warranty of merchantability does not extend  
11 to damage that occurs after the sale of the used motor vehicle  
12 that results from:

13 (1) off-road use;

14 (2) racing;

15 (3) towing;

16 (4) abuse;

17 (5) misuse;

18 (6) neglect;

19 (7) failure to perform regular maintenance; and

20 (8) failure to maintain adequate oil, coolant, and  
21 other required fluids or lubricants.

22 (d) If the implied warranty of merchantability described in  
23 this Section is breached, the consumer shall give reasonable  
24 notice to the seller within 15 days after the date of the  
25 breach. Before the consumer exercises another remedy pursuant  
26 to Article 2 of the Uniform Commercial Code, the seller shall

1 have a reasonable opportunity to repair the used motor vehicle.  
2 The consumer shall pay one-half of the cost of the first 2  
3 repairs necessary to bring the used motor vehicle into  
4 compliance with the warranty. The payments by the consumer are  
5 limited to a maximum payment of \$25 for each repair.

6 (e) The maximum liability of a seller pursuant to this  
7 Section is limited to the purchase price paid for the used  
8 motor vehicle, to be refunded to the consumer or lender, as  
9 applicable, in exchange for return of the vehicle.

10 (f) An agreement for the sale of a used motor vehicle by a  
11 used motor vehicle dealer is voidable at the option of the  
12 consumer unless it contains on its face the following  
13 conspicuous statement printed in boldface, 10-point or larger  
14 type set off from the body of the agreement:

15 "Illinois law requires that this vehicle will be fit for  
16 the ordinary purposes for which the vehicle is used for 15 days  
17 or 500 miles after delivery, whichever is earlier, except with  
18 regard to particular defects disclosed on the first page of  
19 this agreement. You (the consumer) will have to pay up to \$25  
20 for each of the first 2 repairs if the warranty is violated."

21 (g) The inclusion in the agreement of the statement  
22 prescribed in subsection (f) of this Section does not create an  
23 express warranty.

24 (h) A consumer of a used motor vehicle may waive the  
25 implied warranty of merchantability only for a particular  
26 defect in the vehicle and only if all of the following

1 conditions are satisfied:

2 (1) the motor vehicle dealer subject to this Section  
3 fully and accurately discloses to the consumer that because  
4 of circumstances unusual to the business of the used motor  
5 vehicle dealer, the used motor vehicle has a particular  
6 defect;

7 (2) the consumer agrees to buy the used motor vehicle  
8 after disclosure of the defect; and

9 (3) before the sale, the consumer indicates agreement  
10 to the waiver by signing and dating the following  
11 conspicuous statement that is printed on the first page of  
12 the sales agreement or on a separate document in boldface  
13 10-point or larger type and that is written in the language  
14 in which the presentation was made:

15 "Attention consumer: sign here only if the dealer has told  
16 you that this vehicle has the following problem or problems and  
17 you agree to buy the vehicle on those terms:

18 1.....

19 2.....

20 3....."

21 (i) A used motor vehicle dealer subject to this Section has  
22 the burden to prove by a preponderance of the evidence that the  
23 dealer complied with subsection (h) of this Section.

24 (j) A consumer or seller that is aggrieved by a transaction  
25 pursuant to this Section and that seeks a legal remedy shall  
26 pursue an appropriate remedy prescribed in Article 2 of the

1 Uniform Commercial Code and shall comply with the requirements  
2 prescribed in that Article.

3 (k) It shall be an affirmative defense to any claim under  
4 this Section that:

5 (1) an alleged nonconformity does not substantially  
6 impair the use and market value of the motor vehicle;

7 (2) a nonconformity is the result of abuse, neglect, or  
8 unauthorized modifications or alterations of the motor  
9 vehicle;

10 (3) a claim by a consumer was not filed in good faith;

11 or

12 (4) any other affirmative defense allowed by law.

13 (1) Other than the 15 day, 500 mile implied warranty of  
14 merchantability identified herein, a motor vehicle dealer is  
15 not required to provide any further express or implied  
16 warranties to a purchasing consumer unless:

17 (1) the motor vehicle dealer is required by federal or  
18 State law to provide a further express of implied warranty,

19 or

20 (2) the motor vehicle dealer fully informs and  
21 discloses to the consumer that the vehicle is being sold  
22 without any further express or implied warranties, other  
23 than the 15 day mile implied warranty of merchantability  
24 identified in this Section.

25 (m) This Section does not apply to the sale of antique  
26 vehicles, as defined in the Illinois Vehicle Code, or to

1 collector motor vehicles.

2 ~~Any retail sale of a motor vehicle made after January 1, 1968~~  
3 ~~to a consumer by a new motor vehicle dealer or used motor~~  
4 ~~vehicle dealer within the meaning of Chapter 5 of the Illinois~~  
5 ~~Vehicle Code is made subject to this Section.~~

6 ~~(a) The dealer is liable to the purchasing consumer for the~~  
7 ~~following share of the cost of the repair of Power Train~~  
8 ~~components for a period of 30 days from date of delivery,~~  
9 ~~unless the repairs have become necessary by abuse, negligence,~~  
10 ~~or collision. The burden of establishing that a claim for~~  
11 ~~repairs is not within this Section shall be on the selling~~  
12 ~~dealer. The dealer's share of such repair costs is:~~

13 ~~(1) in the case of a motor vehicle which is not more than 2~~  
14 ~~years old, 50%;~~

15 ~~(2) in the case of a motor vehicle which is 2 or more, but~~  
16 ~~less than 3 years old, 25%;~~

17 ~~(3) in the case of a motor vehicle which is 3 or more, but~~  
18 ~~less than 4 years old, 10%; and~~

19 ~~(4) in the case of a motor vehicle which is 4 or more years~~  
20 ~~old, none.~~

21 ~~(b) Notwithstanding the foregoing, such a dealer and a~~  
22 ~~purchasing consumer may negotiate a sale and purchase that is~~  
23 ~~not subject to this Section if there is stamped on any purchase~~  
24 ~~order, contract, agreement, or other instrument to be signed by~~  
25 ~~the consumer as a part of that transaction, in at least~~  
26 ~~10 point bold type immediately above the signature line, the~~

1 ~~following:~~

2 ~~"THIS VEHICLE IS SOLD AS IS WITH NO WARRANTY~~

3 ~~AS TO MECHANICAL CONDITION"~~

4 ~~(c) As used in this Section, "Power Train components" means~~  
5 ~~the engine block, head, all internal engine parts, oil pan and~~  
6 ~~gaskets, water pump, intake manifold, transmission, and all~~  
7 ~~internal transmission parts, torque converter, drive shaft,~~  
8 ~~universal joints, rear axle and all rear axle internal parts,~~  
9 ~~and rear wheel bearings.~~

10 ~~(d) The repair liability means that the dealer will make~~  
11 ~~necessary Power Train component repairs in his shop, or in the~~  
12 ~~shop of his service affiliate, on the basis of his regular list~~  
13 ~~price charge for parts and labor, where the flat rate list~~  
14 ~~price does not exceed 50% of the selling price of the vehicle~~  
15 ~~at the time repairs are requested.~~

16 ~~(e) The age of the vehicle shall be measured according to~~  
17 ~~the manufacturer's model year designation as shown on the~~  
18 ~~Certificate of Title or Registration Certificate. Vehicles~~  
19 ~~shall be designated as current year models, one year old, 2~~  
20 ~~year old, and so forth according to the time that has elapsed~~  
21 ~~since January 1 of the appropriate model year so designated.~~

22 ~~(f) This Section does not preclude the issuance of a~~  
23 ~~warranty or guarantee by a motor vehicle dealer or motor car~~  
24 ~~manufacturer that meets or exceeds the basic provisions of~~  
25 ~~paragraph (a).~~

26 ~~(g) After the effective date of this amendatory Act of~~

1 ~~1989, executives' and officials' cars when so advertised shall~~  
2 ~~have been used exclusively by executives of the parent motor~~  
3 ~~car manufacturer's personnel or by an executive of an~~  
4 ~~authorized dealer in the same make of car. These cars, so~~  
5 ~~advertised, shall not have been sold to a member of the public~~  
6 ~~prior to the appearance of the advertisement.~~

7 Any person who violates this Section commits an unlawful  
8 practice within the meaning of this Act.

9 (Source: P.A. 86-351; 87-1140.)".